

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband Deployment)	
by Removing Barriers to Infrastructure)	WC Docket No. 17-84
Investment		

COMMENTS OF LEVEL 3 COMMUNICATIONS

Level 3 Communications, LLC (Level 3) supports the Commission’s goals of promoting competition, eliminating unnecessary regulatory burdens, and facilitating the more rapid deployment of next-generation networks. In these comments, we share our experience as a pole owner and pole attacher helping to craft appropriate “one touch, make ready” (OTMR) policies.

Level 3 has constructed an extensive broadband network in this country, with over 33,000 buildings on-net and 200,000 route miles of fiber. The company owns thousands of poles in 30 states, pays to attach to thousands more poles as an attacher, and, in light of its continuing aggressive buildout efforts, will need to attach to even more poles in jurisdictions across the country. Level 3, as a result, views pole attachments from the perspective of an owner and an attacher, and has brought this perspective to proceedings before the Commission and to local proceedings such as those in Nashville, Tennessee and Louisville, Kentucky that resulted in OTMR ordinances.

This experience led Level 3 to develop a simple but comprehensive approach to pole attachments that incorporates the company’s experiences at the federal and local levels and the views and input of other providers, particularly those that participated in the development of Nashville’s OTMR ordinance. Level 3 strongly believes that pole attachment rules, including rules regarding OTMR, should be adopted at the federal level so that carriers are not required to repeatedly battle over local ordinances.

I. Permit Processing

Level 3’s proposed permitting process differs from the Commission’s current rules primarily in that it allows for concurrent versus sequential activities and it delivers predictable time frames to attachers. Under Level 3’s proposed process:

Pole owners manage all power and telecom make-ready pole permits to meet make-ready timelines and the build expectations of attachers.

- a. Permits to attach shall be issued in 90 days or less for Simple Make Ready
- b. Permits to attach shall be issued in 120 days or less for Complex Make Ready

c. Exceptions:

- i. Pole owners may negotiate longer permit timelines for very complex make ready projects
- ii. Pole owners shall work with the appropriate state and local authorities (e.g., state Department of Transportation) and the attacher if additional permits are required that impact the permitting timelines.
- iii. For high volume permit requests, pole owner and attacher shall negotiate priorities in a non-discriminatory manner for pole attachments. Pole owners shall use batch processing to ensure compliance with the 90 and 120 day Make Ready timelines described above on a per-batch process.

As the pole owner is responsible for managing all make-ready under Level 3's proposals, appropriate penalties must be levied where the pole owner misses permitting timelines. As a pole owner, Level 3 observes that there are a variety of steps a pole owner can take to streamline their process to meet the simple and complex make-ready timelines identified above, including:

- Having dedicated staff to review permit applications;
- Ensuring sufficient work crews are retained to perform power/telecom pole make ready;
- Eliminating unnecessary permitting for ordinary maintenance work, overloading, and other routine tasks;
- Aligning the pole owner's permitting process with that of local public works authorities;
- Providing advance attachment to attacher during the conduct of power/telecom make ready. If the new position on pole is available and it doesn't conflict with other make ready efforts, the pole owner should immediately grant the attacher their permit to attach to pole;
- Deciding the order of precedence when more than one carrier is trying to attach to the same pole at the same time; and
- As discussed in greater detail below, utilizing One Touch Make Ready for telecom make ready.

II. One Touch Make Ready ("OTMR")

Level 3 is a strong supporter of OTMR, as properly crafted OTMR rules help eliminate make-ready delays. In Level 3's experience, OTMR policies must contain the following components to properly balance the interests of the pole owners and attachers, while ensuring that attachments can be made in a safe, equitable, and timely manner.

- Pole owners must have a pre-approved list of contractors to do the OTMR;

- New attachers must provide 15 days' written notice to existing attachers for simple make ready. New attachers may proceed with OTMR after the notice period;
- New attachers must provide 30 days' written notice for complex make ready to allow a field meeting to be scheduled within that 30 days. During that field meeting, technicians from the existing attacher(s) and the new attacher will decide what steps need to be taken to complete the Complex Make Ready. The existing attacher will have 60 days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting;
- OTMR expenses will be borne by the new attacher;
- The new attacher will place its attachment where instructed by the pole owner (and not assume a priority position on the pole);
- The new attacher shall ensure that any OTMR attachments are conducted in accordance with all applicable federal, state and local laws and regulations and all applicable engineering and safety standards;
- The existing attacher shall have the right to conduct a field inspection within sixty days without waiving any rights;
- The existing attacher shall have the right to conduct a post inspection within sixty days. Any post-inspection corrections performed by the new attacher must be completed within thirty days of written notice to the new attacher; and
- In the event of a dispute arising from any of the parties regarding OTMR, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

Level 3's experience with the OTMR ordinances adopted in Louisville, KY, and Nashville, TN are instructive.¹ Level 3 did not support the ordinance adopted in Louisville because it did not include the components set forth above. The Nashville ordinance, when introduced, was identical to the Louisville ordinance. Level 3 was, however, pleased to support the Nashville ordinance once it was amended to reflect the requirements set forth above. A redline of the Nashville ordinance, before and after the necessary amendments, is set forth in Appendix 1.

III. Capital Costs

Level 3 supports the Commission's proposal to amend section 1.1409 of the Commission's rules to exclude all capital costs from pole attachments rates,² and codify the holding that new attachers are responsible only for the cost of make-ready work made

¹ See Nashville Ordinance No. BL2016-343, Title 13 of the Metropolitan Code, § 13.18 *et seq.*; Louisville Ordinance No. O-427-15, Series 2015, Chapter 116 of the Louisville Metro Code, §§ 116.70(J), 116.72(D).

² NPRM at para. 38.

necessary because of their attachments.³ This is the most appropriate way to ensure that pole owners are appropriately compensated for their actual costs.

Respectfully submitted,

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³ NPRM at para. 35.

Appendix 1 – Amendments to Nashville, TN OTMR Ordinance

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher's expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher's Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The technicians will decide what steps need to be taken to complete the Complex Make Ready;
2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and
3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.
4. The Attacher will not perform (Simple) Make Ready without first providing fifteen (15) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the written notice required in section 13.18.020(A)(1), the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher's expense; provided, however, that the Pre-Existing Third Party User will have sixty (60) days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting required in section 13.18.020(A)(1).

C. The Attacher will place its Attachment where instructed by the Owner.

D. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable

federal, state and local laws and regulations; and all applicable engineering and safety standards.

E. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within sixty (60) days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

F. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, the standards in 13.18.020(D), or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the sixty (60) day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

G. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

H. In the event of a dispute arising out of this Chapter, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.